United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

75-2004

To be argued by
MICHAEL YOUNG

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA ex rel.
EDWARD F. LaBELLE,

Petitioner-Appellant,

-against-

THE HONORABLE J.E. LaVALLEE,
Superintendent,
Clinton Correctional Facility,

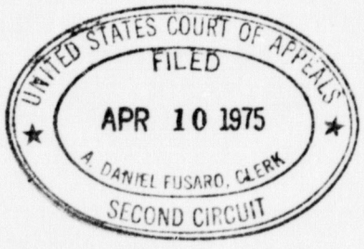
Respondent-Appellee.

B

Docket No. 75-2004

REPLY BRIEF FOR PETITIONER-APPELLANT

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
DENYING A WRIT OF HABEAS CORPUS



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UNITED STATES COURT OF APPEALS
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UNITED STATES OF AMERICA ex rel. EDWARD F. LaBELLE, Petitioner-Appellant, -against- THE HONORABLE J.E. LaVALLEE, Superintendent, Clinton Correctional Facility, Respondent-Appellee.	Docket No. 75-2004

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The following brief is submitted in response to certain arguments made by the appellee in his brief to this Court in the above-captioned case.

I The arrest of Edward LaBelle was illegal.

The State, in its brief, does not dispute appellant's claim that the arrest warrant in this case was void. Consequently, this fact must be taken as conceded (Rule 8, Fed.R.Civ.P.), particularly in light of the fact that every court to consider this case to date has so held (see Appellant's Brief at 11-12).

Similarly, the State does not dispute appellant's claim that under New York law and the Federal Constitution, a police officer may not make a warrantless misdemeanor arrest unless the misdemeanor has occurred in the police officer's presence (see Appellant's Brief at 12-13).*

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*The State's argument that appellant LaBelle has not exhausted his State remedies on the issue of whether his misdemeanor arrest was illegal is without merit. This argument was the basis of the pre-trial suppression motion, and in fact the trial court held that the arrest was illegal (Trial Transcript at 943). Moreover, Point I of LaBelle's brief to the Appellate Division argued that LaBelle was "unlawfully arrested" because the arresting officers lacked either "personal knowledge" or a valid warrant for this misdemeanor arrest.

It must be beyond serious dispute that this argument presented LaBelle's claim to the State courts. The Federal courts have repeatedly held that habeas corpus exhaustion requirements are satisfied if the petitioner has presented the State courts with "an opportunity to apply controlling legal principles to the facts bearing upon [his] constitutional claim." United States ex rel. Kemp v. Pate, 359 F.2d 749, 751 (7th Cir. 1966); see also Wilbur v. Maine, 421 F.2d 1327 (1st Cir. 1970); Sullivan v. Scafati, 428 F.2d 1023, 1024 n.1 (1st Cir. 1970). In fact, in Picard v. Connor, 401 U.S. 273 (1971), the very case cited by the State, the Supreme Court stated:

> Obviously there are instances in which "the ultimate question for disposition" ... will be the same despite variations in the legal

Rather, the State's only attempt to legitimize Edward LaBelle's arrest is its claim that the arrest was valid because the police had probable cause to arrest LaBelle for a felony.* This argument is invalid.

First, at the time of LaBelle's arrest, the police did not even have probable cause to believe that Edward LaBelle was the person who assaulted Mary Dolan. The State, apparently recognizing that Dolan's written statement did not provide the requisite probable cause to believe that LaBelle was one of

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(Footnote continued)

> theory or factual allegations urged in its support.... Hence, we do not imply that respondent could have raised the equal protection claim only by citing "book and verse on the federal constitution." Daugharty v. Gladden, 257 F.2d 750, 758 (CA 9, 1958); see Kirby v. Warden, 297 F.2d 151 (CA 4, 1961). We simply hold that the substance of a federal habeas corpus claim must first be presented to the state courts.
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> Id., 404 U.S. at 278.

Clearly, LaBelle presented more than the mere "substance" of his claim of illegal arrest to both the trial and the appellate courts. Consequently he has satisfied his exhaustion requirements.

*The State's claim (Brief at 9) that "an arrest made pursuant to an invalid warrant is nonetheless lawful if supported by probable cause" is misleading. All the cases cited by the State for this proposition involved felony arrests. As appellant argues in his brief at 12-13, and as the State apparently does not dispute, a warrantless misdemeanor arrest is not lawful, even if supported by probable cause, unless the misdemeanor occurred in the presence of the arresting police officer.

her assailants, attempts in its brief to this Court to supplement her statement with other "evidence" it claims the police possessed prior to LaBelle's arrest. However, not one of the witnesses at the suppression hearing testified that the arrest was based on any evidence other than Dolan's written statement. Moreover, the record does not support the State's claims as to this other "evidence." Thus, the State claims that in addition to Dolan's written statement, Dolan provided other information identifying LaBelle as one of her assailants. Since Dolan admitted that she did not know LaBelle, any such hearsay would not provide probable cause unless it were determined to be reliable. See, e.g., United States v. Thornton, 454 F.2d 957 (D.C. Cir. 1971). Since the police, after interviewing Dolan, obtained arrest warrants in the name of "John Doe" rather than Edward LaBelle, it is clear that the police themselves did not regard any of this "other" information provided by Dolan as sufficiently reliable to provide probable cause to believe that LaBelle was one of Dolan's assailants.

The State's next factual claim is that

> Dolan's description of the car [in which her assailants were riding] included the license number, found to belong to a car registered to petitioner.
>
> State's Brief at 15.

However, the State cites no testimony that the police or anyone else identified the license number as belonging to LaBelle's car prior to LaBelle's arrest. Indeed, no such testimony exists.

Finally, the State argues:

> Assuming arguendo the police knew only the license number of petitioner's car, which they did, this in itself would have given probable cause to arrest petitioner. United States v. Ayers, 436 F.2d 524, 519 [sic] (2d Cir. 1970), cert. den. 400 U.S. 842; United States ex rel. Mungo v. LaVallee, 372 F.Supp. 742 (E.D.N.Y. 1974).

Neither the facts in this case nor the cases cited by the State support this claim of probable cause. Both Ayers and Mungo stand only for the proposition that where the police have probable cause to believe that the driver of a particular car has just committed a felony, and they then encounter that car, they have probable cause to arrest its driver. Here, the officers who arrested LaBelle never interviewed Dolan or had any knowledge of the contents of her statement (Hearing Transcript at 85, 128). There was no testimony that either of these officers had been told the license number Dolan had recorded, or that they compared that license number with the license number on LaBelle's car prior to arresting him. To the contrary, they were merely given the John Doe misdemeanor arrest warrant (which likewise did not list the license number Dolan had described) and were told to use that arrest warrant to arrest LaBelle. Thus, neither the officers who took Dolan's statement nor the officers who arrested LaBelle ever identified LaBelle's car as the one Dolan had described prior to LaBelle's arrest.*

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*Moreover, even if the police had identified the license number plate given by Dolan as belonging to LaBelle's car, this information alone would not give the police probable cause to

In sum, the State's claim that the police had other "evidence" to bolster Dolan's statement so as to establish probable cause for LaBelle's arrest is not supported by the record. Dolan's written statement, failing even to suggest that LaBelle was one of her assailants, did not provide that probable cause.

Secondly, assuming arguendo that the police had probable cause to believe that LaBelle was one of the men who committed the misdemeanor assault on Dolan, it is clear that under New York law and the Federal Constitution LaBelle's warrantless arrest for a misdemeanor was illegal (see Appellant's Brief at 11-15). The State seeks to rectify this illegality by hypothesising that at the time of the arrest the police also had probable cause to believe that LaBelle had committed a felony. This argument is likewise without merit.

First, it should be noted that the State is making this particular allegation for the first time before this Court. In the state courts, the State claimed and the Appellate Division found only that "there was probable cause and legally sufficient grounds for the arrest of Edward LaBelle on the charge of assault third degree [a misdemeanor]," (State's Brief

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(Footnote continued)

believe that LaBelle was one of the individuals who assaulted Dolan. As Ayers and Mungo indicate, such information rises to the level of probable cause only when the person driving the identified car has just committed a crime. The mere fact that LaBelle was driving that car two days later when he was arrested would not provide probable cause to believe that he was one of the two individuals in that car two days earlier when Dolan was assaulted.

to the Appellate Division at 21).

This new claim by the State is not supported by the facts in this case. As the State concedes, for the police to have probable cause to believe that the individuals who attempted to get Dolan to go for a ride with them had committed a felony, they would have to have had probable cause to believe that those individuals had the requisite intent to kidnap her, keep her concealed from her parents, or commit some other felony. It is clear from the record, as it must have been clear to the police, that if two adult males had had such an intent with regard to this fourteen-year-old girl, their conduct certainly would have been more forceful and more successful. Dolan did not have to be "rescued," as the State would have this Court believe (State's Brief at 15); to the contrary, when Dolan made it clear that she would resist getting into the car, the men eventually drove away. Probable cause to believe that these men intended to kidnap Dolan or commit some other felony is simply not supported by such circumstances. This is precisely why the police, realizing that they lacked probable cause for a felony charge, sought only a misdemeanor arrest warrant.

II Even assuming arguendo that LaBelle's arrest was legal, the subsequent warrantless search of his car for evidence to connect him to the Snay homicide was unconstitutional.

The State, in its brief to this Court, does not attempt to argue that the police had probable cause to search LaBelle's car for evidence of the Snay homicide or for any other reason at the time LaBelle was arrested and the car initially seized. Indeed, in its brief to the Appellate Division the State conceded that "[a]t the time that Edward LaBelle was arrested, the police had absolutely no information linking Edward LaBelle to the Snay murder" (State's Brief to the Appellate Division at 24). Accepting this concession, the Appellate Division, and the Federal District Court, by adopting the decision of the Appellate Division, found:

> [T]he People readily admit that at the time of the arrest for assault, Keating and Garrett [the arresting officers] did not have probable cause to search the car and the police did not have probable cause to arrest appellant for murder.
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> 332 N.Y.S.2d at 750.

The State argues, however, that Officer White did not need to have probable cause or a warrant to enter LaBelle's car, and that once White discovered the bloodstain inside the car the police had probable cause to search the car for evidence of the Snay homicide. The State further argues that the subsequent

search of the car at the police garage for that purpose was valid despite the absence of a warrant.

A. Even if the bloodstain was legally seized and gave the police probable cause to search the car for evidence of the Snay homicide, the failure to obtain a warrant to conduct that search rendered it unconstitutional.

Assuming arguendo the State's claim that White's entry into LaBelle's car was constitutional (but see Appellant's Brief at 19) and that his observance of the bloodstain inside the car gave the police probable cause to believe that the car contained criminal evidence (but see Point II-B, infra), the State's conclusion that Chambers v. Maroney, 399 U.S. 132 (1970), relieved the police of their Fourth Amendment obligation to obtain a warrant before searching the car at the police garage is invalid. Rather, the facts of this case disqualify it from the warrant exception recognized in Chambers, rendering the warrantless search of the car violative of LaBelle's Fourth Amendment rights. Coolidge v. New Hampshire, 403 U.S. 443 (1971); Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968); Preston v. United States, 376 U.S. 364 (1964).

Despite the claims made in the State's brief, the Chambers decision does not establish the principle that car searches are generally free of the Fourth Amendment warrant requirement. To

the contrary, in Coolidge v. New Hampshire, supra, a car search case decided after Chambers, the Supreme Court stressed the limitations of the Chambers decision:

> The word "automobile" is not a talisman in whose presence the Fourth Amendment fades away and disappears.
>
> Coolidge v. New Hampshire, supra, 403 U.S. at 461-462.

Rather, the Coolidge Court found that an automobile, like any other property, is subject to

> ... the most basic constitutional rule ... that "searches conducted outside the judicial process without prior approval by judge or magistrate, are per se unreasonable under the fourth amendment -- subject only to a few specifically established and well-delineated exceptions." The exceptions are "jealously and carefully drawn," and there must be "a showing by those who seek exemption ... that the exigencies of the situation made that course imperative." The burden is on those seeking the exemption to show the need for it.
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> Id., 403 U.S. at 454-455.

The State, in the present case, has failed to meet its burden of showing the need for excluding LaBelle's car from the warrant requirements of the Fourth Amendment.

The critical fact denying the State the benefit of the narrow exception to the warrant requirement recognized in Chambers is that in the present case the State has conceded that the police did not attain probable cause to search LaBelle's car until after LaBelle had been arrested and the car had been taken into police custody. The warrant exception recognized in Chambers and its predecessor, Carroll v. United States, 267

U.S. 132 (1925), apply only to cases in which the police have probable cause to search the car before it is seized.

Carroll v. United States, supra, held that where police have probable cause to stop and search a car which is traveling on the open road, they may do so without a warrant. The exigent circumstances given in Carroll as the ground for dispensing with the warrant requirement was that the car, unless it was already in police custody, was mobile, and could be driven out of the jurisdiction or hidden before the police could obtain a warrant, thereby preventing the authorized search.

Chambers held only that in those cases where a warrantless search was authorized under Carroll before the car was stopped, the police, rather than conducting an immediate search, could seize the car (in effect, the commencement of the search) and remove it to a police garage where the warrantless search could be continued. The Chambers decision does not apply to cases where an immediate warrantless search would not have been authorized under Carroll, as the Court clearly stated in Coolidge v. New Hampshire, supra, 400 U.S. at 463:

> Since Carroll would not have justified a warrantless search of the Pontiac at the time Coolidge was arrested, the later search at the station house was plainly illegal, at least so far as the [Carroll] automobile exception is concerned. Chambers, supra, is of no help to the State, since that case held only that, where the police may stop and search an automobile under Carroll, they may also seize it and search it later at the police station. [Emphasis added.]

In the present case, the State concedes that the police did not have probable cause to search the car until after it had been stopped, its driver arrested, and the car taken into police custody. Consequently, by the time the police believed they had attained probable cause to search the car, they were no longer authorized under Carroll or Chambers to do so without a warrant.

In fact, once the car was in police custody, the exigent circumstances which provided the basis for the Carroll-Chambers exception to the warrant requirement evaporated. Since the car was in police custody, it was no longer "mobile" in the sense that the cars in Carroll and Chambers were. "The opportunity for search was thus hardly 'fleeting.'" Coolidge v. New Hampshire, supra, 403 U.S. at 460. Given this fact, when the police thereafter believed, on the basis of the subsequent discovery of the bloodstain inside the car that they had acquired probable cause to search the car for evidence relating to the Snay homicide, they were required to obtain a warrant before doing so. Preston v. United States, supra, 376 U.S. at 884; Coolidge v. New Hampshire, supra. As the Court in Coolidge held:

> [T]his case is controlled by Dyke v. Taylor Implement Mfg. Co., supra. There the police lacked probable cause to seize or search the defendant's automobile at the time of his arrest, and this was enough by itself to condemn the subsequent [warrantless] search at the station house. Here, there was probable cause, but no exigent circumstances justified

> the police in proceeding without a warrant. As in Dyke, the later [warrantless] search at the station house was therefore illegal.
>
> Id., 403 U.S. at 463-464. Emphasis added.

In the present case, then, the State cannot justify the seizure of LaBelle's car at the time of his arrest under the authority of Carroll. Rather, lacking the independent probable cause required by Carroll and Chambers at that time, the State can claim justification of this seizure only as a seizure of evidence incident to LaBelle's arrest (Preston v. United States, supra)* or a seizure pursuant to a community care-taking responsibility (see, e.g., Cady v. Dobrinski, 413 U.S. 433 (1973)).** Such a seizure, however, does not authorize a subsequent search of the car for criminal evidence, unless a warrant is first obtained. Preston v. United States, supra, 376 U.S. at 883-884, cited with approval in Chambers v. Maroney, supra.

Finally, the Supreme Court's holding in Cardwell v. Lewis, 417 U.S. 583 (1974), supports appellant's claim that the police were obliged to obtain a search warrant before searching his

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*Appellant LaBelle argues, in his main brief at 16-17, that seizure of the car on this ground was invalid because the car was not evidence pertinent to the assault for which LaBelle was arrested.

**Appellant LaBelle also argues in his main brief at 17-18 that seizure of the car on this basis was invalid, since Cady justifies such a seizure only when the driver is so inebriated or comatose as to be unable to make his own arrangements for removal of the car to a private garage.

car. In that case the police, after impounding a car, conducted a warrantless examination of its exterior for evidence. The Court found that this external examination did not require a warrant since the scope of the search did not involve an invasion of privacy protected by the Fourth Amendment. Id. at 591. However, despite the fact that the car was initially seized from a public parking lot, where the Court found the "exigent circumstances" of Carroll and Chambers existed, the Court strongly suggested that a warrant would have been required for a subsequent search of the interior of the car:

> In the present case, nothing from the interior of the car and no personal effects, which the Fourth Amendment traditionally has been deemed to protect, were searched or seized and introduced into evidence.
>
> Id., 417 U.S. at 591.

In fact, it was the limited scope of the exterior examination of the car which the Cardwell Court found to distinguish Cardwell from the warrant requirement of Coolidge:

> Coolidge concerned a thorough and extensive search of the entire automobile including the interior from which, by vacuum sweepings, incriminating evidence was obtained. A search of that kind raises different and additional considerations not present in the examination of a tire on an operative wheel and in the taking of exterior paint samples from the vehicle in the present case for which there was no reasonable expectation of privacy.
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> Id., 417 U.S. at 593, fn.9.

In the present case, as in Coolidge, the search was "a thorough and extensive" examination of the interior of the car and its trunk.

Finally, the Cardwell Court forewarned of the precise misinterpretation of Chambers the State now advances in this case:

> [W]e are not confronted with any issue as to the propriety of a search of a car's interior. "Neither Carroll, supra, nor other cases in this Court require or suggest that in every conceivable circumstance the search of an auto even with probable cause may be made without the extra protection for privacy that a warrant affords." [Chambers v. Maroney, supra, 399 U.S.] at 50.
>
> Cardwell v. Lewis, supra, 417 U.S. at 592, fn.8.

In sum, since the State concedes that the police did not have probable cuase to search LaBelle's car at the time it was seized, the subsequent warrantless search of that car was not authorized under the "automobile exception" of Chambers v. Maroney, supra. Since the State does not claim that the search was authorized under any of the other exceptions to the warrant requirement of the Fourth Amendment, the search was constitutionally invalid.

B. The police lacked probable cause to believe that LaBelle's car contained evidence relating to the Snay homicide at the time they searched it.

Appellant LaBelle argued in his main brief that, regardless of whether the police were obliged to obtain a warrant, the search of his car was unconstitutional because the police lacked

probable cause at the time their search of the car was conducted. The suspected bloodstain which Officer White discovered inside the car would not, by itself, give the police probable cause to search the car and trunk for criminal evidence. As appellant LaBelle explains in his main brief, the record indicates that the only other evidence which the police had at the time of LaBelle's arrest which would make him a suspect in the Snay homicide was the fact that he and his brother were known to have been in the town near where Miss Snay's body had been found on the day of the murder.

The State, in its brief, classifies this claim as "incorrect and misleading," and alleges that the record establishes that the police had an abundance of "other evidence" connecting LaBelle to the Snay homicide at the time of his arrest and the search of his car (State's Brief at 20-22).

It should be noted at the outset that the State itself, in its brief to the Appellate Division, unconditionally stated that "at the time Edward LaBelle was arrested, the police had absolutely no information linking Edward LaBelle to the Snay murder" (State's brief to the Appellate Division at 24). For the State now to claim just the opposite in its brief to this Court must cast serious doubt on the validity of the State's claims.

In fact, all the "other evidence" the State claims provided the probable cause basis for the search of LaBelle's car comes from statements made by one Terrence Huneau and one Ann Marie

Mayville Smith to the police (State's Brief at 21-22). Yet, as the State implicitly concedes, the record nowhere establishes that the police even talked to these individuals prior to searching LaBelle's car. Rather, the State is reduced to suggesting that there was only a "possibility" that the police had talked to these two individuals and gained this information prior to the search of the car (State's Brief at 22). In fact, none of the police officers who testified at the suppression hearing claimed that they were relying on any such information to provide probable cause to search the car. Consequently, the State's arguments as to this "other evidence" must be rejected.

Conclusion

For the foregoing reasons and the reasons set forth in the main brief for appellant, the writ of habeas corpus must be granted and petitioner-appellant LaBelle released from custody.

Respectfully submitted,

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